

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

MAY 21 2013

JAMES W. McCORMACK, CLERK
By: [Signature] DLP CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION

LOUIS ROSS

PLAINTIFF

VS.

CASE NO. 5:13-cv-154 SWW

UNION PACIFIC RAILROAD COMPANY
AND JOHN DOE,
NAME AND ADDRESS UNKNOWN

DEFENDANTS

NOTICE OF REMOVAL

Nelson G. Wolff
Schlichter, Bogard & Denton
100 South Fourth Street, Suite 900
St. Louis, MO 63102

Paul J. James
James, Carter, Coulter, PLC
500 Broadway
Little Rock, AR 72203

This case assigned to District Judge Wright
and to Magistrate Judge Deere

Lafayette Woods, Sr.
Jefferson County Circuit Clerk
P.O. Box 7433
Pine Bluff, Arkansas 71611

PLEASE TAKE NOTICE that the captioned case filed as case number CV-2013-175-5 in the Circuit Court of Jefferson County, Arkansas, has been removed to the United States District Court for the Eastern District of Arkansas, Pine Bluff Division. Union Pacific Railroad files this Notice of Removal and states:

1. Plaintiff initiated this action on April 5, 2013, in the Circuit Court of Jefferson County, Arkansas, case number CV-2013-175-5. Plaintiff seeks damages in excess of \$75,000 as a result of an automobile collision with a railroad crossing arm on July 19, 2011, in Pine Bluff, Arkansas at the West 17th Avenue crossing. Union Pacific received a copy of the Summons and

Complaint on April 22, 2013; therefore, pursuant to 28 U.S.C. § 1446(b), this Notice of Removal is timely. A copy of the Summons, the Complaint, the Affidavit of Service and the Answer, which constitute all process, pleadings, and orders that have been filed with the Circuit Clerk of Jefferson County as of May 21, 2013, are attached hereto as Exhibits A, B, C & D.

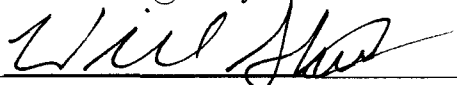
2. Defendant removes this action pursuant to the Court's diversity jurisdiction under 28 U.S.C. § 1332. Therefore, this case is removable under 28 U.S.C. § 1441 in accordance with the procedures set forth in 28 U.S.C. § 1446.

3. Plaintiff is citizen of Arkansas, residing in Jefferson County, Arkansas. Defendant is Delaware Corporation with its principle place of business in Omaha, Nebraska. Pursuant to 28 U.S.C. § 1441(b)(1), "the citizenship of defendants sued under fictitious names shall be disregarded." The amount in controversy exceeds \$75,000.

4. Notice of Removal is provided to the Circuit Court of Jefferson County, Arkansas, and Plaintiff's attorneys, Nelson Wolff and Paul James.

Respectfully submitted,

Joseph P. McKay, 99006
William D. Shelton, Jr., 2011086
FRIDAY, ELDREDGE & CLARK, LLP
400 West Capitol, Suite 2000
Little Rock, AR 72201-3522
Telephone: (501) 370-1497
Facsimile: (501) 244-5326
E-Mail: wshelton@fridayfirm.com

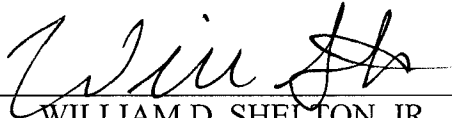
By: 
William D. Shelton, Jr.

CERTIFICATE OF SERVICE

I, William D. Shelton, Jr., hereby certify that a true and correct copy of the foregoing pleading has been served by U.S. Mail, postage prepaid, on this 21st day of May, 2013, upon:

Nelson G. Wolff
Schlichter, Bogard & Denton
100 South Fourth Street, Suite 900
St. Louis, MO 63102

Paul J. James
James, Carter, Coulter, PLC
500 Broadway
Little Rock, AR 72203



WILLIAM D. SHELTON, JR.

**THE CIRCUIT COURT OF JEFFERSON COUNTY, ARKANSAS
DIVISION**

**Plaintiff
LOUIS ROSS**

v.

No: CV-2013-175-5

**Defendant
UNION PACIFIC RAILROAD COMPANY
AND JOHN DOE,
NAME AND ADDRESS UNKNOWN**

SUMMONS

**THE STATE OF ARKANSAS TO DEFENDANT: UNION PACIFIC RAILROAD
COMPANY, THE CORPORATION COMPANY, 124 W. CAPITOL AVE., SUITE 1900,
LITTLE ROCK, AR 72201**

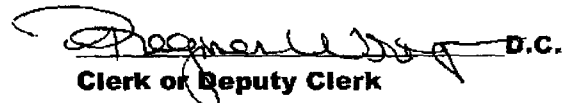
A lawsuit has been filed against you. The relief demanded is stated in the attached complaint. Within 30 days after service of this summons on you (not counting the day you received it) _ or 60 says if you incarcerated in any jail, penitentiary, or other correctional facility in Arkansas - you must file with the clerk of this court a written answer to the complaint or a motion under Rule 12 of the Arkansas Rules of Civil Procedure.

The answer or motion must also be served on the plaintiff or plaintiff's attorney, whose name and address are: JAMES, CARTER & COULTER PLC, 500 BROADWAY, SUITE 400, LITTLE ROCK, AR 72201

If you fail to respond within the applicable time period, judgment by default may be entered against you for the relief demanded in the complaint.

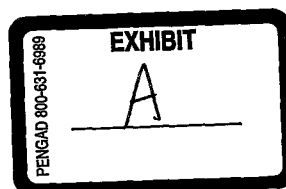
P.O. Box 7433
Pine Bluff, AR 71611

Lafayette Woods, Sr., Circuit Clerk


D.C.
Clerk or Deputy Clerk

Date: April 5, 2013

Case no: CV-2013-175-5
This summons is for: UNION PACIFIC RAILROAD COMPANY



PROOF OF SERVICE

- ☐ I personally delivered the summons and complaint to the individual at _____ on _____ [date]; or
- ☐ I left the summons and complaint in the proximity of the individual by _____ after he/she refused to receive it when I offered it to him/her; or
- ☐ I left the summons and complaint at the individual's dwelling house or usual place of abode at _____ [address] with _____ [name], a person at least 14 years of age who resides there, on _____ [date]; or
- ☐ I delivered the summons and complaint to _____ [name of individual], and agent authorized by appointment or by law to receive service of summons on behalf of _____ [name of defendant] on _____ [date]; or
- ☐ I am the plaintiff or an attorney of record for the plaintiff in this lawsuit, and I served the summons and complaint on the defendant by certified mail, return receipt requested, restricted delivery, as shown by the attached signed return receipt.
- ☐ I am the plaintiff in this lawsuit, and I mailed a copy of the summons and complaint by first-class mail to the defendant together with two copies of a notice and acknowledgement and received the attached notice and acknowledgement form within twenty days after the date of mailing.
- ☐ Other[specify]: _____
- ☐ I was unable to executed service because: _____

My fee is\$ _____

To be completed if service is by a sheriff or deputy sheriff:

Date: _____ SHERIFF OF _____ COUNTY, ARKANSAS
By: _____

[Printed name, title, and badge number]

To be completed if service is by a person other than a sheriff or deputy sheriff:

Date: _____ By: _____

[Signature of server]

[Printed name]

Address: _____

Phone: _____

Subscribed and sworn to before me this date: _____

My commission expires: _____

Notary Public

Additional information regarding service or attempted service:

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ARKANSAS
DIVISION NO. 5th

LOUIS ROSS,

PLAINTIFF

v.

Case No. CV-2013-175-5

UNION PACIFIC RAILROAD COMPANY
AND JOHN DOE,
NAME AND ADDRESS UNKNOWN,

DEFENDANTS

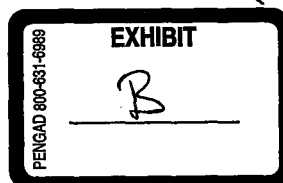
SERVE DEFENDANT UNION PACIFIC AT:

The Corporation Company
124 West Capitol Avenue, Suite 1900
Little Rock, Arkansas 72201

COMPLAINT

COMES NOW Plaintiff Louis Ross, by and through his attorneys Schlichter, Bogard & Denton, and for his Complaint against Defendant Union Pacific Railroad Company and Defendant John Doe states as follows:

1. This action for personal injuries and damages suffered by Plaintiff Louis Ross arises out of the malfunctioning of a Union Pacific Railroad Company mechanical crossing guard arm on July 19, 2011 in Pine Bluff, Arkansas.
2. At all relevant times, Plaintiff Louis Ross has been a resident of Jefferson County, Arkansas.
3. Defendant Union Pacific Railroad Company is a corporation duly organized and existing under the law. Defendant is engaged in the business of operating a railway system in interstate commerce and in the transportation of freight by railroad in interstate commerce in Jefferson County and the State of Arkansas.



FILED IN MY OFFICE AND SUMMONS
ISSUED AT 11:15 O'CLOCK 4 M
APR - 5 2013 DATE
LAFAYETTE WOODS, SR., CLERK
[Signature]

4. Defendant John Doe, whose name and address are unknown and could not be discovered through reasonable effort, is an unknown manager employed by Defendant Union Pacific and is responsible for maintaining the proper functioning of the subject crossing guard. Upon information and belief, Defendant John Doe is a resident of the state of Arkansas.

5. On July 19, 2011, Louis Ross was traveling westbound on West 17th Avenue in Pine Bluff, Arkansas, at or near the intersection with Defendant Union Pacific's railroad crossing when the railroad crossing arm came down on his vehicle, causing Plaintiff to sustain injuries and damage to his vehicle.

6. Defendants, individually or by and through their agent(s), employee(s), servant(s), and or representative(s), were negligent on the aforementioned date/time/location, in one or more of the following respects:

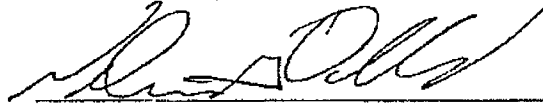
- a. They failed to use reasonable care to make the railroad crossing safe to prevent injury to Plaintiff;
- b. They failed to properly secure, inspect, and maintain its railroad crossing guard and railroad guard arm;
- c. Their improperly inspected and maintained railroad crossing, railroad crossing guard, and railroad crossing guard arm presented a dangerous condition that involved unreasonable risk of injury to Plaintiff;
- d. Defendants knew or should have known of this dangerous condition, and they failed to use reasonable care to maintain, remove, or warn Plaintiff of the dangerous condition, which a reasonably careful person would have done under circumstances similar to those shown by the evidence in this case.

7. As a proximate cause of Defendants' negligence, Plaintiff suffered injuries to his back and spine; he has sustained injuries to the soft tissues, ligaments, tendons, muscles, blood vessels of his back and spine; he has been caused to undergo severe pain and suffering; he has sought and received medical care and attention and will continue to receive medical care and attention; he has suffered psychological and emotional injury, mental anguish and anxiety and

will continue to suffer psychological and emotional injury, mental anguish and anxiety in the future; he has incurred medical expenses and will in the future; all to his damage.

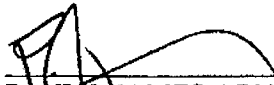
WHEREFORE, Plaintiff Louis Ross prays for judgment against Defendant Union Pacific Railroad Company and Defendant John Doe in a sum which is fair and reasonable, which sum is in excess of \$75,000.00, plus cost of suit incurred.

SCHLICHTER, BOGARD & DENTON



NELSON G. WOLFF ABN #2006002
100 South Fourth Street, Suite 900
St. Louis, Missouri 63102
(314) 621-6115
(314) 621-7151 (fax)
nwolff@uselaws.com

and



PAUL J. JAMES ABN #83091
JAMES CARTER, COULTER, P.L.C.
500 Broadway
Little Rock, Arkansas 72203
866-716-3242
501-372-1659 (fax)

ATTORNEYS FOR PLAINTIFF

PLAINTIFF REQUESTS TRIAL BY JURY

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ARKANSAS
FIFTH DIVISION

LOUIS ROSS

PLAINTIFF

v.

CASE NO. CV-2013-175-5

UNION PACIFIC RAILROAD COMPANY

DEFENDANT

AFFIDAVIT OF SERVICE

Comes Paul J. James, attorney for the Plaintiff, and for his affidavit of service, states:

1. On April 18, 2013, Plaintiff mailed the Summons, Complaint, Interrogatories and Requests for Production of Documents to The Corporation Company, registered agent for service of Union Pacific Railroad Company by certified mail number 7010 0780 0001 9201 2404, return receipt requested.

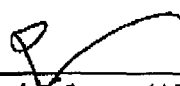
2. On April 22, 2013, the Summons, Complaint, Interrogatories and Requests for Production of Documents were received by the office of the registered agent for Union Pacific Railroad Company and the return receipt was stamped signed by CT Corporation. See "Exhibit A" attached hereto and made a part hereof.

3. The receipt stamped signed by CT Corporation was effective service of process.

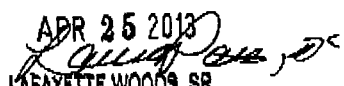
4. Further affiant saith naught.

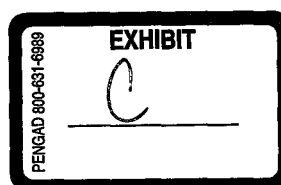
Respectfully submitted,

Attorneys for Plaintiff

By: 
Paul J. James (AR Bar No. 83091)
JAMES, CARTER & COULTER, PLC
Post Office Box 907
Little Rock, Arkansas 72203-0907
(501) 372-1414 Telephone
(501) 372-1659 Facsimile

FILED

APR 25 2013

LAFAYETTE WOODS, SR.
Circuit Clerk
JEFFERSON COUNTY, ARKANSAS



SUBSCRIBED AND SWORN to before me, this 23rd day of April, 2013.

Ronda K. Johnson
Notary Public

My Commission Expires March 8, 2015

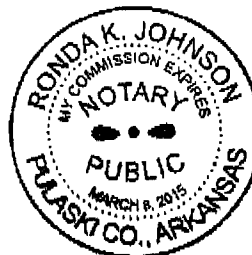


EXHIBIT "A"

U.S. Postal Service
CERTIFIED MAIL[®] RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com.

OFFICIAL USE

Postage	\$ 1.72	Postmark Here 04/18/2013
Certified Fee	3.10	
Return Receipt Fee (Endorsement Required)	2.55	
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$ 7.37	

7010 0780 0001 9201 2404

SENT TO: **UNION PACIFIC RAILROAD COMPANY**
7010 THE CORPORATION COMPANY
 Street, Apt. No.,
 or PO Box No. **SUITE 1900**
 City, State, ZIP+4[®] **LITTLE ROCK, AR 72201**

PS Form 3800, August 2005 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<p>1. Complete item 2, and if also complete item 4, Restricted Delivery is desired.</p> <p>2. Print your name and address on the reverse so that we can return the card to you.</p> <p>3. Attach this card to the back of the mail piece, from the front if possible.</p> <p>4. Addressed to:</p> <p>UNION PACIFIC RAILROAD COMPANY 7010 THE CORPORATION COMPANY SUITE 1900 LITTLE ROCK, AR 72201</p>	<p>5. Signature</p> <p>7010 CORPORATION</p> <p>6. Received by (Print Name) (If Date Subscribing)</p> <p>04-18-2013</p> <p>Do not return this card if item is returned. If YES, enter delivery address below.</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>7. Additional Information</p> <p>Transfer from Service Center</p>	<p>8. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Insured Mail</p> <p><input type="checkbox"/> Registered Mail <input type="checkbox"/> Signature Required for Merchandise</p> <p><input type="checkbox"/> Restricted Delivery (Extra Fee)</p>
<p>PS Form 3800, August 2005</p>	<p>7010 0780 0001 9201 2404</p> <p>PS Form 3800, August 2005</p>

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ARKANSAS
FIFTH DIVISION

LOUIS ROSS

PLAINTIFF

VS.

CASE NO. CV-2013-175-5

UNION PACIFIC RAILROAD COMPANY
AND JOHN DOE,
NAME AND ADDRESS UNKNOWN

DEFENDANTS

DEFENDANT'S ANSWER TO PLAINTIFF'S COMPLAINT

COMES NOW the Defendant, Union Pacific Railroad Company, and for its Answer to Plaintiff's Complaint states as follows:

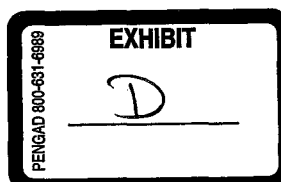
1. Union Pacific admits that Plaintiff has filed an action for personal injuries and damages. Union Pacific denies the remaining allegations contained within paragraph 1 of Plaintiff's Complaint.
2. Union Pacific is without sufficient information to admit or deny the allegations contained in paragraph 2 of the Plaintiff's Complaint and therefore denies them.
3. Defendant admits that it is a corporation organized and existing under the law. Defendant admits that some of its business constitutes operating a railway system in interstate commerce and in the transportation of freight by railroad in interstate commerce in Jefferson County and the State of Arkansas. Union Pacific denies the remaining allegations contained in paragraph 3 of Plaintiff's Complaint.
4. Defendant is without sufficient information to admit or deny the allegations contained in paragraph 4 of the Plaintiff's Complaint and therefore denies them.
5. Union Pacific denies the allegations contained in paragraph 5 of Plaintiff's Complaint.

FILED

MAY 17 2013

LAFAYETTE WOODS, SR.
Circuit Clerk
JEFFERSON COUNTY, ARKANSAS

1



6. Defendant denies the allegations contained in paragraph 6 of the Plaintiff's Complaint and all subparagraphs thereunder.

7. Defendant denies the allegations contained in paragraph 7 of the Plaintiff's Complaint.

8. Defendant denies the allegations contained in the WHEREFORE paragraph of the Plaintiff's Complaint.

9. Defendant demands a trial by jury.

10. Defendant denies all allegations contained in Plaintiff's Complaint not specifically admitted herein.

11. Defendant denies that it was in any way negligent and states that the accident was caused by the negligence of the driver of the vehicle, including but not limited to one or more of the following:

- (a) the driver failed to keep a proper lookout;
- (b) the driver failed to stop;
- (c) the driver failed to use ordinary care to look and listen for activation of the crossing protection devices;
- (d) the driver failed to stop his vehicle at a time when the crossing protection devices were activated and presented an immediate hazard to him;
- (e) the driver failed to stop at the crossing when the crossing protection devices were plainly visible;
- (f) the driver failed to exercise due care in operating his vehicle;

- (g) the driver failed to keep the vehicle under proper control and to operate with caution and circumspection under the existing conditions of the time and place alleged;
- (h) the driver failed to drive his vehicle at a speed reasonable and proper under the circumstances;
- (i) the driver failed to use the brakes and steering mechanism to stop or turn the vehicle to avoid the collision; and
- (j) the driver operated his vehicle in a careless and wanton manner without regard for the safety of others.

12. Defendant asserts that federal law preempts all of Plaintiff's claims against it based on the adequacy of the crossing warning devices, and the training of Defendant's employees.

13. Pleading affirmatively, Plaintiff's Complaint should be dismissed for insufficiency of process.

14. Pleading affirmatively, Plaintiff's Complaint should be dismissed for insufficiency of service of process.

15. Defendant reserves the right to plead further and reserve objections on the basis of insufficiency of process, insufficiency of service of process, failure to join a party under Rule 19, if any, pendency of another action between the same parties arising out of the same transaction or occurrence, and the affirmative defenses available under Rule 8, including but not limited to, arbitration and award, discharge in bankruptcy, duress, estoppel, exclusiveness of remedy under workers' compensation law, failure of consideration, fraud, illegality, injury by fellow servant,

laches, license, payment, release, les judicata, setoff, statute of frauds, statute of limitations, waiver, and any other matter constituting and avoidance or affirmative defense.

16. Plaintiff's allegation that Union Pacific Railroad negligently maintained the crossing guard arm is expressly preempted by 49 U.S.C. § 20106 and 49 CFR § 234.4.

WHEREFORE Defendant Union Pacific Company prays that Plaintiff's Complaint be dismissed, for its costs, and for other relief to which it is entitled.

Respectfully submitted,

Joseph P. McKay, 99006
William D. Shelton, Jr., 2011086
FRIDAY, ELDREDGE & CLARK, LLP
400 West Capitol, Suite 2000
Little Rock, AR 72201-3522
Telephone: (501) 370-1497
Facsimile: (501) 244-5326
E-Mail: jmckay@fridayfirm.com
E-Mail: wshelton@fridayfirm.com

By: 

WILLIAM D. SHELTON, JR.

CERTIFICATE OF SERVICE

I, William D. Shelton, Jr., hereby certify that a true and correct copy of the foregoing pleading has been served by U.S. Mail, postage prepaid, on this 17 day of May, 2013, upon:

Nelson G. Wolff
Schlichter, Bogard & Denton
100 South Fourth Street, Suite 900
St. Louis, MO 63102

Paul J. James
James, Carter, Coulter, PLC
500 Broadway
Little Rock, AR 72203


WILLIAM D. SHELTON, JR.